

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
WILLIAN BARBOZA,

Plaintiff,

-versus-

DETECTIVE STEVEN D'AGATA, sued in his  
individual capacity and POLICE OFFICER  
MELVIN GORR sued in his individual capacity,

Case No. 13 CV 4067 (CS)

Defendants.  
-----X

**CERTIFICATION UNDER 28 U.S.C. § 2403(b)**

The Court certifies under 28 U.S.C. § 2403(b) that this case draws into question the constitutionality of a statute of New York State affecting the public interest. The case presents a challenge to the constitutionality of New York State Penal Law § 240.30(1)(a) as applied to the plaintiff's speech and on its face insofar as it criminalizes "annoying" or "alarming" speech.

The Clerk of the Court is ordered to notify the New York State Attorney General of this certification at the following address:

Office of the Attorney General  
Division of Appeals & Opinions  
120 Broadway, 25th Floor  
New York, NY 10271-0332

The New York State Attorney General may intervene in the case within 60 days from August 17, 2013, the date <sup>of this Order</sup> ~~that the plaintiff filed the Notice of Constitutional Challenge to a State~~  
~~Statute.~~

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SO ORDERED.

  
District Judge Cathy Seibel

Dated: August 9, 2013

**NYCLU**

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Mariko Hirose  
Staff Attorney  
Extension: 322  
mhiose@nyclu.org

**By Fax to: 914-390-4278**

Hon. Cathy Seibel

The Hon. Charles L. Brieant Jr.

Federal Building and United States Courthouse

300 Quarropas St.

White Plains, NY 10601-4150

August 8, 2013

Re: *Barboza v. D'Agata*, No. 13 CV 4067 (CS)  
Certification Under 28 U.S.C. § 2403(b)

Dear Judge Seibel:

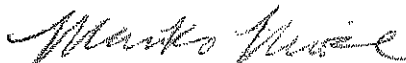
As requested at the August 6, 2013 conference, please find enclosed a proposed certification to the New York State Attorney General pursuant to 28 U.S.C. § 2403(b), notifying the Attorney General that this case calls into question the constitutionality of a statute affecting the public interest. The plaintiff has brought this case in part seeking a declaration in the course of a liability finding that Penal Law § 240.30(1)(a), under which he was arrested and prosecuted, is unconstitutional as applied to his speech and on its face insofar as it criminalizes "annoying" or "alarming" speech.

The statutory section 28 U.S.C. § 2403(b) provides, in relevant part:

"In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality."

The plaintiff therefore respectfully requests that the Court issue the enclosed certification and direct that it be mailed to the New York State Attorney General. In addition, Federal Rule of Civil Procedure 5.1(c) provides that "[u]nless the court sets a later time, the attorney general may intervene within 60 days after the notice [by the party under Rule 5.1(a)] is filed or after the court certifies the challenge, whichever is earlier." The plaintiff filed the Notice of Constitutional Challenge to a State Statute under Rule 5.1(a) with the Court on August 7, 2013. The plaintiff therefore requests that the Court order in the certification that the Attorney General intervene in the case within 60 days of August 7, 2013, if he wishes to do so.

Respectfully submitted,



Mariko Hirose  
New York Civil Liberties Union Foundation.

Stephen Bergstein  
Bergstein & Ullrich, LLP

*Counsel for Plaintiff*

*Enclosure*

cc (by simultaneous fax and by first class mail):

Adam L. Rodd, Esq.

Drake, Loeb, Heller, Kennedy, Gogerty, Gaba & Rodd, PLLC

Fax: (845) 458-7304